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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
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Summary record (partial)* of the 1292nd meeting
Held at the Palais Wilson, Geneva, on Tuesday, 21 April 2015, at 10 a.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Sixth periodic report of New Zealand (CAT/C/NZL/6; CAT/C/NZL/Q/6; HRI/CORE/NZL/2010)

1. *At the invitation of the Chairperson, the delegation of New Zealand took places at the Committee table.*

2. **Mr. Chhana** (New Zealand), introducing his country's sixth periodic report (CAT/C/NZL/6), said that considerable efforts had been made to give effect to the provisions of the Convention. His Government recognized that several challenges remained in the combat against torture and other cruel, inhuman or degrading treatment or punishment, particularly in regard to the functioning of the judicial system and the mental health-care services, trafficking in persons, and the handling of historic abuse claims.

3. In respect of the functioning of the judicial system, initiatives such as the 2012 Better Public Services Programme and the 2013 Youth Crime Action Plan had been introduced in an effort to reduce the overall rate of crime, including youth and violent offences, and to address the overrepresentation of the Maori as victims and perpetrators within the criminal justice system. Both initiatives contained measures designed to include the Maori in the judicial system in a more effective manner by improving their access to justice and establishing specialist prison rehabilitation units. Steps had also been taken to reduce domestic violence and provide adequate support to victims of ill-treatment and abuse through the Stronger Response to Family Violence and Achieving Intergenerational Change programmes and the Policing Excellence initiative. Their activities had included the launching of a home safety service to enable victims to leave violent or abusive relationships, the establishment of a chief advisor to improve victims' experience of the justice system and the strengthening of judicial procedures to respond in a more effective manner to victims' needs.

4. Concerning trafficking in persons, considerable efforts had been made to eradicate the phenomenon through the harmonization of the national legal definition of trafficking with that contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and the introduction of the 2014 Organized Crime and Anti-corruption Legislation Bill, which amended the offence of trafficking to include domestic trafficking. Charges had been brought against perpetrators of trafficking for the first time in August 2014 and prosecutions were under way against several defendants accused of trafficking 18 Indian nationals into New Zealand. Attempts had also been made to enhance the legal safeguards against forced labour and labour exploitation and to strengthen the monitoring and implementation of fishing and maritime labour standards.

5. Regarding the treatment of persons with psychosocial or intellectual disabilities in mental health facilities, the Government had implemented several measures to ensure that the use of restraints or isolation units was limited solely to cases in which the persons concerned posed an immediate danger to themselves or others and intended to devise additional guidance on the use of restraints in mental health settings in the near future.

6. As to the historic claims of abuse of children and young persons in State care, the Government had established a robust and thorough resolution process that fully investigated every case and provided compensation where appropriate. As of 2014, some 575 claims had been successfully resolved, and it was hoped that all victims would have their cases investigated by the end of 2020.

7. Lastly, he stressed that the Government remained committed to implementing the recommendations of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment following its visit to New Zealand in 2013 and looked forward to receiving the report of the United Nations Working Group on Arbitrary Detention regarding its visit in 2014.

8. **Mr. Modvig** (Country Rapporteur) welcomed the State party's ongoing commitment to combating torture and asked what steps had been taken during the reporting period to implement comprehensive legislation to incorporate all the provisions of the Convention into domestic law. He also wished to know how many complaints of torture and ill-treatment committed by State officials had been submitted, investigated and prosecuted and what type of convictions and criminal and disciplinary sanctions had been applied. In addition, he sought clarification on whether the State party intended to abandon the system which gave the Attorney-General discretion to decide whether or not to prosecute such offences, even in cases in which there were reasonable grounds to believe that an act of torture had been committed. Further information on the steps taken by the State party to guarantee the rights of persons in police custody from the very outset of their detention, including prompt access to a lawyer and access to an independent doctor, as well as the right to notify family, would also be appreciated.

9. Noting the success of the Turning the Tide programme which put in place safeguards to protect the rights of the Maori from discrimination and marginalization, he asked whether there were plans to extend the programme to other marginalized groups within society. He also wished to know whether the State party intended to introduce a national action plan to address domestic violence in partnership with civil society which included targeted and measurable indicators. In that regard, information on the steps taken to monitor the quality and coverage of the support provided by social workers and community health visitors to child victims of abuse and the procedures established to investigate alleged cases of child abuse would also be welcome.

10. As to trafficking in persons, he requested up-to-date information on the efforts made to improve the identification and investigation of trafficking cases and the total number of cases recorded. He also asked about the status of the national preventive mechanism and whether it had been provided with the necessary human, material and, in particular, financial resources to enable it to fully comply with its mandate. Comments on whether the State party would consider working in partnership with civil society to monitor places of detention would be appreciated. Similarly, he wished to know whether steps would be taken to address the long-standing concerns of the Office of the Ombudsman regarding the overreliance on isolation units in mental health facilities.

11. Concerning the treatment of undocumented migrants and asylum seekers, he asked what procedures had been put in place to identify and properly care for victims of torture among those groups upon their arrival in New Zealand. He also enquired whether undocumented migrants and asylum seekers had access to adequate legal safeguards, including the right to habeas corpus and to an effective appeal under the Immigration Act. Furthermore, he wished to know how the State party ensured that genuine asylum seekers forming part of mass arrivals were not unfairly detained for long periods and whether compensation was provided in those cases. Similarly, he asked whether security-risk certificates continued to be issued under the Immigration Act, which permitted the authorities to remove or deport any person deemed to constitute a threat to national security, without providing detailed reasons to the person concerned. Lastly, he asked whether the State party had conducted extraditions on the basis of diplomatic assurances during the reporting period and, if so, how it had monitored and enforced those assurances.

12. **Mr. Zhang** (Country Rapporteur), turning to article 10 of the Convention and the issue of the training of the judiciary and law enforcement officials, said that, in paragraph

120 of the State party report (CAT/C/NZL/6) it was indicated that an understanding of the Convention was included in the initial training course for all new Department of Corrections custodial staff. He asked whether police officials and prison doctors also underwent such training.

13. He enquired about the effectiveness of training provided to officials on the identification and recording of cases of trafficking in persons in the light of cooperation with the Government of Australia on the issue of the mass arrival of immigrants.

14. He asked for information on the link between trafficking in persons and sexual violence in the State party.

15. As to article 11, he asked how the State party differentiated between interrogation and interview in law and how confessions were obtained from suspects given that there were no powers of interrogation under the Corrections Act 2004.

16. He said that Maori were disproportionately represented in the State party's prison population and asked the delegation to keep the Committee updated on the outcome of the strategy to reduce Maori offending, reoffending and victimization set out in paragraph 141 of the periodic report.

17. He requested more information on the way staff of the Department of Corrections worked with offenders to bring about a positive change in their behaviour.

18. He asked whether the State party intended to raise the age of criminal responsibility to 18 years in order to bring domestic legislation into line with international standards and requested an update on the number of 10 or 11 year olds convicted of murder or manslaughter in the State party.

19. He also asked for updated information on overcrowding in prisons in the State party.

20. Turning to articles 12 and 13, he requested additional information on the four legal complaints received by the New Zealand High Court regarding ill-treatment in prison since 2009.

21. On article 14, he noted that prosecutions had not yet been brought against the alleged perpetrators of ill-treatment of child patients at Lake Alice hospital and asked for an explanation in that regard. He also asked why the victims of that ill-treatment had so far only received ex gratia payments.

22. He asked whether the Government of New Zealand would consider withdrawing its reservation to article 14 of the Convention.

23. As to article 16, turning to the issue of the use of tasers, he said that the Committee had been informed by a number of NGOs that such weapons were being used too frequently, causing injuries. He also asked how the New Zealand police dealt with potentially dangerous situations with minimal use of tasers and firearms.

24. **Ms. Belmir** asked why the State party continued to maintain a reservation to article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and reservations to articles 32, paragraph 2, and 37 (c) of the Convention on the Rights of the Child, particularly relating to the segregation of juvenile detainees from adult detainees.

25. She referred to the fact that the Attorney General, the New Zealand police and, in the case of offences allegedly committed by members of the armed forces, high-ranking military officers, had the power to decide whether prosecutions should be instituted. She said that oversight of police activities in the State party was carried out by serving or retired police officials, meaning that there was no real independent monitoring of the actions of law enforcement bodies.

26. She asked why Maori women made up a disproportionately high percentage of the female prison population in the State party.

27. The age of legal capacity in the State party was set at 12 years. Minors were held together with adults in police custody facilities and were sometimes subjected to ill-treatment. Although complaints could be filed, the police were not obliged to carry out an investigation. She asked whether all persons resident in the State party, including immigrants, were subject to the existing domestic legal framework on an equal basis.

28. **Mr. Bruni** noted that the Independent Police Conduct Authority was responsible for monitoring the treatment of persons in police custody. However, it was stated on the Authority's official website that most complaints to the Authority were referred to the police for investigation and resolution and that the Authority independently oversaw police handling of complaints. Such a situation meant that there was a real danger that investigations would not be carried out in an objective manner. Furthermore, the Authority did not have the power to bring prosecutions against alleged perpetrators of acts of torture, it being the responsibility of the New Zealand police to determine whether there was admissible, reliable and strong evidence to establish a prima facie case. He asked whether allegations of police torture were investigated by the police and asked for examples of complaints filed by persons in police custody and of the corresponding action taken.

29. He asked why the Inspector of Service Penal Establishments had reported zero expenditure for 2012/13.

30. As to the privatization of prisons, although there was only one private prison in New Zealand, there were plans to open a second such establishment later on in 2015. A recent Radio New Zealand report indicated that, over the past few years, the rate of prisoner-on-prisoner and prisoner-on-prison official assaults had been higher in the private prison than in its public counterparts. He asked for an explanation in that regard.

31. It was reported that private prisons did not have to meet the same requirements as public prisons in terms of the ratio of prison officials to prisoners. Furthermore, prison officials working in the private sector who were on sick leave were not replaced. He asked for more information in that regard.

32. **Mr. Domah** asked for information on the outcome of the work of the Constitutional Advisory Panel on the supremacy of the New Zealand Bill of Rights Act 1990 over other legislation. A number of NGOs had pointed to a lack of political will in that regard. He urged the State party to make provision for legal and judicial remedies arising from human rights as soon as possible.

33. He asked whether the State party still relied heavily on national preventive mechanisms to ensure government accountability relating to the protection afforded under the Bill of Rights Act.

34. He asked whether there had been any cases in which section 29 of the Evidence Act 2006 on the exclusion of statements influenced by oppression had been applied to exclude evidence obtained through torture and whether any related rulings had been handed down.

35. As to the Organized Crime and Anti-corruption Legislation Bill, he asked for clarification relating to the amendment of the offence of trafficking in persons.

36. **Mr. Gaye** said that he took a positive view the way in which the State party had acquitted itself of its obligations under the Convention. Referring to paragraph 97 of the periodic report, he asked to which body decisions concerning extradition could be appealed and whether any extradition decisions had been overruled or revoked because of the risk of torture in the destination country.

37. Noting the emphasis placed on impartial investigation in the Convention, he supported Mr. Bruni's remarks concerning the Independent Police Conduct Authority and the danger that accusations made against the police might not be properly investigated. Moreover, it was not clear whether the Authority could submit a case to the State prosecution service.

38. **Ms. Pradhan-Malla** said that, while the efforts of the State party to integrate the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime into national law were encouraging, the international definition of torture had not been incorporated into New Zealand law. She would therefore be grateful to learn what treaty jurisprudence New Zealand followed and what mechanisms had been established in order to ensure the application of the many international human rights norms which it had ratified.

39. She commended the State party for the detailed statistics it had provided on the prosecution of violence against women and the stronger response mechanism that was to be introduced in order to deal with family violence. She asked whether any preventive mechanisms had been put in place on family violence and whether the State party intended to include the threat of violence as well as acts of violence in its relevant legislation.

40. The State party had indicated that sexual minorities were still disproportionately subjected to torture and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had already called for the repeal of all laws and health-care practices that discriminated against lesbian, gay, bisexual, transgender and intersex persons; she asked how the law would be improved in that respect. She requested comments from the State party on the situation of transgender prisoners, who were particularly vulnerable to abuse and sexual assault.

41. **Mr. Tugushi** said it appeared that some of the national preventive mechanisms were not implementing their mandates in line with the requirements of the Optional Protocol: the Office of the Children's Commissioner said that it had been prevented from doing so by lack of funds, while doubts had been raised as to whether the five national preventive mechanisms could be perceived as a united lead agency in torture prevention. He asked whether there were plans to increase funding for the mechanisms and to develop and maintain their identity. Improved channels of communication with regard to implementation of the recommendations arising from different parts of the mechanisms were also needed.

42. Concerning fundamental safeguards for the prevention of torture, it appeared that detained persons were not always promptly informed of the reasons for their detention and information concerning the rights of detainees was not displayed in writing in all police stations. He asked whether measures would be taken to remedy that situation.

43. As a result of classification of detainees, different categories of prisoners could be discriminated against. Some remand prisoners were confined to their cells for 19 hours per day while the high number of segregated prisoners pointed to the incidence of inter-prisoner violence in penitentiary institutions in New Zealand. He accepted that some prisoners might request separation, but he queried how discrimination against prisoners requesting protection might be ended so that they were not placed in isolation and deprived of their rights as a consequence. It appeared that medical personnel and psychiatrists were not always available to provide mental health services in detention facilities; he asked whether the Government intended to develop a strategy in order to attract more qualified staff.

44. There were serious infrastructure issues, in particular in older facilities and in police stations used as gaols, that impacted on conditions in detention such as natural light,

privacy of detainees, sanitation, heating, ventilation and humidity. He asked whether the State party intended to elaborate a national plan to overcome those shortcomings.

45. **The Chairperson**, speaking as a member of the Committee, thanked the State party for having responded in its sixth periodic report to issues that she had raised in her capacity as Rapporteur for follow-up to concluding observations. With regard to seclusion in mental health facilities, which had been referred to by the delegation in its opening statement and in paragraphs 288–292 of the report, she wished to know the number of cases of extended seclusion that had been investigated and the number of cases in which administrative or criminal penalties had been imposed.

46. Turning to the issue of overcrowding in prisons (report, paras. 171–180), she noted that the use of double bunking had been extended in response to the closure of older prisons. She wished to know the current size of the prison population and whether the number of cells shared by two prisoners or more had gone up significantly since 2011. The State party's assertion, in paragraph 178 of the report, that it had "found no evidence that increases in double bunking are associated with increased incident rates" and that some prisoners preferred double bunking were unusual explanations for an emergency procedure that was generally associated with overcrowding, inter-prisoner violence and other forms of abuse. She asked why there were no plans to eliminate double bunking and whether any complaints had been received. She asked what were the "quality requirements" mentioned in paragraph 179 and whether any staff had been disciplined for failing to maintain adequate facilities in the prisons for which they were responsible.

47. She was surprised to learn from paragraph 246 of the State party report that no charges had been laid as a result of the investigation of complaints concerning the Lake Alice hospital and that police misconduct would be more appropriately raised with the Independent Police Conduct Authority. She asked why the Crown did not propose undertaking any further review.

48. Noting from paragraph 250 that the report by the Human Rights Commission on its "independent review of the state's response to historic claims of abuse and mistreatment" had not been completed, she asked whether and when that report would be published in full.

49. She supported Mr. Bruni's remarks with respect to the Independent Police Conduct Authority: she found it unsettling that it was the only body empowered to investigate complaints of torture made against the police.

50. Turning to the issue of violence against women, the NGO Women's Health Action had indicated that New Zealand had never conducted a national awareness campaign targeting sexual violence and that the Government had no strategy related to the issue. Crisis response services were available in only 70 per cent of the country. She asked in which locations such services were not available and whether there were plans to introduce them or to launch national awareness campaigns.

51. She joined Ms. Belmir in querying the overrepresentation of Maori women in prisons. Although only 6 per cent of incarcerated persons were women, 58 per cent of them were of Maori origin, when Maori made up only 15 per cent of the general population. She asked what measures were being taken to lower recidivism rates for women prisoners of Maori origin.

52. She found it troubling that people of Maori ethnicity were "at greater risk of being both perpetrators and victims of violent crimes" and wondered whether the analysis in paragraph 42 of the State party report showing that ethnicity was not significantly related to risks of perpetrating or being a victim of interpersonal violence "when due allowance is made for social, family and related factors" was not an attempt to cover up abuse. She

asked whether the study referred to was used as a guide by police and social services when dealing with abuses in New Zealand.

53. **Mr. Modvig** (Country Rapporteur) asked the State party to elaborate on the excessive use of seclusion in mental health institutions and on any plans to reduce the practice. He enquired what was the average duration of seclusion. He wished to know how many of the medical personnel trained to recognize torture under the Istanbul Protocol were employed in the criminal justice and immigration systems. Further to Ms. Belmir's comments on minors deprived of their liberty, he wished to know whether the State party intended to extend protection to 17-year-olds.

54. Although 575 claims of historic abuse had been settled, they represented only about one third of the total number of cases received since 2004 and therefore the number settled did not fulfil the requirement in the Convention for prompt processing of complaints. He asked the delegation to address the apparent inadequacy of procedures of redress in cases of historic abuse, bearing in mind the Committee's general comment No. 3 which prescribed several forms of reparation, including the right to as full rehabilitation as possible.

55. **Mr. Zhang** (Country Rapporteur) noted the statement in paragraph 223 of the State party report that there had been "no prosecutions for an act of torture under the Crimes of Torture Act" since its previous report and asked how many claims for redress or compensation had been received during the period. He wished to know why it had been necessary to close registrations for the Confidential Listening and Assistance Service and whether a satisfactory alternative was proposed.

56. **Ms. Belmir** said that, during the previous periodic review, the Committee had noted that tasers had been used more frequently against young people and persons of Maori origin; she wished to know whether that was still the case and whether precautions in the use of that weapon had been improved. She asked how the ability of the State party to fulfil its obligations under the Convention would be affected by privatization of the prison service.

The discussion covered in the summary record ended at 11.45 a.m.